

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA, a foreign
insurance company,

Plaintiff,

v.

PRECISION INDUSTRIAL
CONTRACTORS, INC. a Washington
Corporation, and MAPLEHURST
BAKERIES, LLC, a Indiana limited liability
corporation.

Defendants.

No.

**COMPLAINT FOR
DECLARATORY RELIEF
(28 U.S.C. § 2201)**

Plaintiff Travelers Property Casualty Company of America (hereafter “TPCC”) submits the following Complaint for Declaratory Relief pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57.

I. PARTIES

1.1 Plaintiff TPCC is a foreign insurance company licensed to conduct business in the State of Washington. TPCC is organized under the laws of the State of Connecticut with its

1 principal place of business in the State of Connecticut. TPCC is licensed to transact business in
2 Washington and at all material times has transacted business in Washington.

3 1.2 Defendant Precision Industrial Contractors, Inc. (hereafter “PIC”) was and is a
4 Washington corporation with its principal place of business in Vancouver, Washington.

5 1.3 Defendant Maplehurst Bakeries (hereafter “Maplehurst”) is an Indiana limited
6 liability company with its principal place of business in Indiana. At all material times
7 Maplehurst was and is authorized to transact business in Washington. Maplehurst is a wholly
8 owned subsidiary of Weston Foods US, Inc., a Delaware Corporation.

9 II. JURISDICTION AND VENUE

10 2.1 Jurisdiction is properly before this Court pursuant to 28 U.S.C. §1332, *et. seq.*, as
11 complete diversity exists among the parties and the amount in controversy exceeds \$75,000.

12 2.2 The Court has jurisdiction over this declaratory judgment action pursuant to
13 28 U.S.C. § 2201 because there is an actual and justiciable controversy between the parties with
14 respect to the existence of insurance coverage under the policy of insurance issued by TPCC. A
15 judicial determination and declaration of the rights and obligations of the parties is necessary and
16 appropriate at this time because TPCC has no adequate remedy at law which will resolve the
17 current controversy.

18 2.3 The subject claim arises from activities which allegedly occurred at Maplehurst
19 Bakeries’ commercial bakery, located in 21331 88th Place South, Kent, Washington 98021.

20 2.3 Venue is proper in this Court pursuant to 28 U.S.C. § 1391 as this action involves
21 a dispute over the application of insurance coverage under an insurance policy issued in
22 Washington, events and omissions which gave rise to this claim occurred in this district, and
23

1 because Maplehurst is subject to this Court's personal jurisdiction.

2 **III. FACTUAL BACKGROUND**

3 **A. Underlying Facts**

4 3.1 The subject claim arises from repair and maintenance at the Maplehurst Bakeries'
5 (hereafter "Maplehurst") commercial bakery located in Kent, Washington.

6 3.2 In May of 2016, Maplehurst contracted with John Bean Technologies (hereafter
7 "JBT") for the refurbishment of its spiral food freezer.

8 3.3 This work required removal and reinstallation of the spiral freezer's conveyor belt
9 and replacement of the conveyor belt's connection rods.

10 3.4 JBT contracted a portion of the work to PIC but remained in a supervisory and
11 directory role.

12 3.5 PIC commenced work on the project in May of 2016 and completed its work over
13 a five-day period.

14 3.6 Alleged problems with food contamination began around September 21, 2016,
15 when Maplehurst allegedly received reports of foreign material on a pumpkin pie from one of its
16 major customers, Sam's Club.

17 3.7 Investigation allegedly revealed the foreign plastic material in question originated
18 from the spiral freezer.

19 3.8 Consultants determined that a portion of the conveyor belt rods were installed
20 backwards. The improperly installed connection rods scraped against the plastic guides, releasing
21 plastic into the spiral freezer including onto some pies that were processed therein.

22 3.9 As a result, Maplehurst was allegedly required to issue a mandatory recall and
23 destroy a significant amount of product. Maplehurst incurred costs for storage, transportation,

1 disposal, repairs to the spiral freezer, additional expenses for enhanced inspection of pies, and
2 had to credit some customers for their costs and losses associated with the recall.

3 3.10 The recall allegedly affected an estimated 1.7 million pies and Maplehurst claims
4 damages estimated to exceed \$9,900,000.

5 3.11 Maplehurst's own forensic accounting determined the production period in
6 question is between July 27, 2016, and September 30, 2016.

7 **B. Underlying Lawsuits**

8 3.12 On August 2, 2019, Maplehurst commenced suit against JBT and PIC in King
9 County Superior Court under cause number 19-2-20355-2 KNT. On December 20, 2019, the
10 court dismissed JBT from the King County Superior Court action based on Illinois venue
11 provisions in JBT's agreement with Maplehurst. The Court of Appeals Division II has affirmed
12 the trial courts' dismissal of JBT from the King County Superior Court cause of action.

13 3.13 On January 28, 2020, Maplehurst commenced suit against JBT and PIC in Cook
14 County, Illinois, under cause number 1:2020-cv-01392. PIC has been dismissed from the Cook
15 County action.

16 **IV. POLICY OF INSURANCE**

17 **A. Identification of the Subject Insurance Policy**

18 4.1 TPCC issued a commercial general liability insurance policy to PIC under policy
19 number DTE-CO-2D651799 for the one-year period of June 1, 2015, to June 1, 2016 (hereafter
20 "The Policy").

21 4.2 PIC's commercial general liability policy has a \$1,000,000 each occurrence limit
22 and \$2,000,000 products and completed operations aggregate limit.
23

B. Provisions of the Subject Policy

4.3 The commercial general liability portion of the Policy contains the following insuring agreement:

**SECTION I -COVERAGES
COVERAGE A BODILY INJURY AND PROPERTY
DAMAGE LIABILITY**

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit seeking damages for “bodily injury” or “property damage” to which this insurance does not apply. We may, at our discretion, investigate any “occurrence” and settle any claim or “suit” that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sum or perform acts or services is covered unless explicitly provided for under Supplementary Payments Coverages **A** and **B**.

b. This insurance applies to “bodily injury” and “property damage” only if:

- (1) The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”;
- (2) The “bodily injury” or “property damage”

occurs during the policy period;

(3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no “employee” authorized by you to give or receive notice of an “occurrence” or claim, knew that the “bodily injury” or “property damage” had occurred, in whole or in part. If such a listed insured or authorized “employee” knew, prior to the policy period, that the “bodily injury” or “property damage” occurred, then any continuation, change or resumption of such “bodily injury” or “property damage” during or after the policy period will be deemed to have been known prior to the policy period.

c. “Bodily injury” or “property damage” which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. Of section II – Who is an Insured or any “employee” authorized by you to give or receive notice of an “occurrence” or claim, includes any continuation, change or presumption of that “bodily injury” or “property damage” after the end of the policy period

d. “Bodily injury” or “property damage” will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any “employee” authorized by you to give or receive notice of an “occurrence” or claim:

(1) Reports all, or any part, of the “bodily injury” or “property damage” to us or any other insurer;

(2) Receives a written or verbal demand or claim for damages because of the “bodily injury” or “property damage”; or

(3) Becomes aware by any other means that “bodily injury” or “property damage” has occurred or has begun to occur.

...

CG 00 01 10 01, p. 1.

4.4 The Policy contains the following definitions that are applicable to the foregoing Insuring Agreement.

SECTION V – DEFINITIONS

...

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

...

17. "Property damage" means:

- a.** Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b.** Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

...

CG 00 01 10 01, pp.14-15

4.5 The commercial general liability portion of the Policy contains the following exclusions and applicable definitions:

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1)** That the insured would have in the absence of the contract or agreement; or
- (2)** Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed by you in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a

party other than an insured will be deemed to be damages because of "bodily injury" or "property damage", provided that:

- (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
- (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

CG 00 01 10 01, p. 2.

SECTION V – DEFINITIONS

...
9. "Insured contract" means:

- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement....

CG 00 01 10 01, p. 13.

j. Damage To Property

"Property damage" to:

- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

...

Paragraph (6) of this exclusion does not apply to “property damage” included in the “products completed operations hazard”.

CG 00 01 10 01, p. 4-5.

16. "Products-completed operations hazard":

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

(1) Products that are still in your physical possession; or

(2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:

(a) When all of the work called for in your contract has been completed.

(b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.

(c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

CG 00 01 10 01, p. 14.

k. Damage To Your Product

“Property damage” to “your product” arising out of it or any part of it.

CG 00 01 10 01, p. 5.

l. Damage To Your Work

“Property damage” to “your work” arising out of it or any part of it and included in the “products-completed operations hazard”.

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a sub-contractor.

CG 00 01 12 04, p. 5.

m. Damage To Impaired Property Or Property Not Physically Injured

“Property damage” to “impaired property” or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in “your product” or “your work”; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to “your product” or “your work” after it has been put to its intended use.

CG 00 01 12 04 p. 5.

SECTION V – DEFINITIONS

...
8. “Impaired property” means tangible property, other than “your product” or “your work”, that cannot be used or is less useful because:

- a. It incorporates “your product” or “your work” that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of “your product” or “your work”; or
- b. Your fulfilling the terms of the contract or agreement.

...

21. “Your Product”:

- a. Means:
 - (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or

- (c) A person or organization whose business or assets you have acquired; and

...

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- (2) The providing of or failure to provide warnings or instructions.

...

22. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and
- (2) The providing of or failure to provide warnings or instructions.

CG 00 01 10 01, p. 13, 15.

n. Recall of Products, Work or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property"

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

CG 00 01 10 01, p. 5.

4.6 The Policy also contain the following policy endorsement:

**AMENDMENT- NON CUMULATION OF EACH
OCCURRENCE LIMIT OF LIABILITY and NON
CUMULATION OF PERSONAL and ADVERTISING
INJURY LIMIT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. Paragraph 5 of SECTION III - LIMITS OF INSURANCE, is amended to include the following:

Non cumulation of Each Occurrence Limit - If one "occurrence" causes "bodily injury" and/or "property damage" during the policy period and during the policy period of one or more prior and/or future policies that include a commercial general liability coverage part for the insured issued by us or any affiliated insurance-company, the amount we will pay is limited. This policy's Each Occurrence Limit will be reduced by the amount of each payment made by us and any affiliated insurance company under the other policy because of such "occurrence".

...

CG D2 03 12 97.

- 4.7 The Policy also contains the following policy endorsement:

WASHINGTON CHANGES – DEFENSE COSTS

This endorsement modifies insurance provided under the following:

COMMERICAL GENERAL LIABILTY COVERAGE PART

- B. If we initially defend an insured ("insured") or pay for an insured's ("insured's") defense but later determine that none of the claims ("claims"), for which we have provided defense or defense costs, are covered under this insurance, we have the right to reimbursement for the defense costs we have incurred.

The right to reimbursement under this provision will only apply to the costs we have incurred after we notify you in writing that there may not be coverage and that we are

1 reserving our rights to terminate the defense or the payment
2 of defense costs and to seek reimbursement of defense costs.

3 IL 01 23 11 13.

4 4.8 TPCC first received notice of the lawsuit filed against PIC on March 10, 2021.

5 4.9 As a matter of good faith and fair dealing TPCC investigated the claims alleged
6 against PIC.

7 4.10 On or about March 26, 2021, TPCC agreed to defend PIC subject to a full
8 reservation of rights.

9 4.11 In accordance with applicable law, TPCC now brings this claim for Declaratory
10 Judgment seeking a judicial determination that it does not owe any coverage obligation to PIC
11 for the claims asserted in the Maplehurst claim.

12 **V. NO INDEMNITY OR DEFENSE COVERAGE UNDER THE POLICY**

13 5.1 TPCC reasserts paragraphs 1.1 through 4.11 and incorporates the same as though
14 fully stated herein.

15 5.2 The Policy provides coverage only for “property damage” caused by an
16 “occurrence,” as those terms are defined by the Policy, provided that any such “property damage”
17 occurs during the policy period.

18 5.3 There is an actual and justiciable controversy as to whether the claims against PIC
19 involve claims for “property damage” as that term is defined.

20 5.4 There is an actual and justiciable controversy as to whether the alleged liability of
21 PIC is for “property damage” caused by any covered “occurrence.”

22 5.5 There is an actual and justiciable controversy as to whether any “property
23 damage” took place during any applicable policy period.

 5.6 The Policy does not provide coverage for losses which the insured had knowledge

1 of prior to the policy period.

2 5.7 There is an actual and justiciable controversy as to whether PIC had knowledge,
3 of the alleged loss or of any alleged “property damage” prior to the policy period.

4 5.8 Pursuant to the Policy, coverage is excluded for liability for “property damage”
5 to that particular part of real property on which an insured or its contractors or subcontractors
6 worked directly or indirectly for the insured’s operations if the “property damage” arose out of
7 those operations.

8 5.9 There is an actual and justiciable controversy as to whether the claims against PIC
9 involve liability for “property damage” to that particular part of real property on which PIC, or
10 its contractors or subcontractors, worked directly or indirectly for its operations and if said
11 “property damage” arose out of those operations.

12 5.10 Pursuant to the Policy, coverage is excluded for liability arising from damages
13 claimed for any loss, cost or expense incurred by PIC or others for the loss of use, withdrawal,
14 recall, inspection, repair, replacement, adjustment, removal or disposal of “your product,” “your
15 work,” or “impaired property” if such product, work, or property is withdrawn or recalled from
16 the market or from use by any person or organization because of a known or suspected defect,
17 deficiency, inadequacy or dangerous condition in it.

18 5.11 There is an actual and justiciable controversy as to whether the claims against PIC
19 involve liability for damages claimed for any loss, cost or expense incurred for the loss of use,
20 withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of “your
21 product,” “your work,” or “impaired property” that has been withdrawn or recalled from the
22 market or from use by any person or organization because of a known or suspected defect,
23 deficiency, inadequacy, or dangerous condition in it.

1 5.12 Pursuant to the Policy, coverage is excluded for liability for “property damage”
2 to the insured’s “your product.”

3 5.13 There is an actual and justiciable controversy as to whether the claims against PIC
4 involve liability for “property damage” to PIC’s product.

5 5.14 Pursuant to the Policy, coverage is excluded for any contract under which PIC
6 assumed liability that is not an “insured contract” or for liability that PIC would have in the
7 absence of the contract or agreement.

8 5.15 There is an actual and justiciable controversy whether PIC’s liability was assumed
9 under any contract PIC had with JBT or any other entity.

10 5.16 Pursuant to the Policy, coverage is excluded for liability for “property damage”
11 to “your work.”

12 5.17 There is an actual and justiciable controversy as to whether the claims against PIC
13 involve liability for “property damage” to PIC’s work.

14 5.18 Pursuant to the Policy, coverage is precluded for “property damage” to “impaired
15 property” or other property that has not been physically injured arising out of a defect, deficiency,
16 inadequacy or dangerous condition in the insured’s product or the insured’s work.

17 5.19 There is an actual and justiciable controversy as to whether any alleged “property
18 damage” to any allegedly “impaired property” or other property that has not been physically
19 injured arises out of a defect, deficiency, inadequacy, or other dangerous condition in PIC’s work
20 or product.

21 5.20 Pursuant to the Policy, coverage is excluded for “property damage” to “impaired
22 property” or other property that has not been physically injured arising out of a delay or failure
23 by an insured or anyone acting on the insured’s behalf to perform a contract or agreement in

1 accordance with the terms of the contract or agreement.

2 5.21 There is an actual and justiciable controversy as to whether any alleged “property
3 damage” to any allegedly “impaired property” or other property that has not been physically
4 injured arises out of a failure by PIC to perform a contract or agreement in accordance with the
5 terms of the contract or agreement related to the Project.

6 5.22 Pursuant to the Policy, coverage is excluded for liability arising from property
7 that must be restored, repaired, or replaced because the insured’s work was incorrectly performed
8 on it after the completion of the insured’s work.

9 5.23 There is an actual and justiciable controversy as to whether the claims against PIC
10 involve liability arising from property that must be restored, repaired, or replaced because PIC’s
11 work was incorrectly performed on it after the completion of the insured’s work.

12 5.24 Pursuant to the non-cumulation provisions of the Policy, any payment by TPCC
13 under any policy for any “occurrence” will reduce the limit of each successive policy issued by
14 TPCC by the amount of any such payment for that “occurrence.”

15 5.25 To the extent that a progressive loss is alleged, there is an actual and justiciable
16 controversy as to whether any potential coverage available under the Policy would limit TPCC’s
17 obligations to a single policy period.

18 5.26 To the extent that multiple policies apply, there is an actual and justiciable
19 controversy as to whether TPCC’s obligations to PIC exceed the per occurrence limit of
20 \$1,000,000.

21 5.27 Pursuant to the Policy, if TPCC initially pays for an insured’s defense but later
22 determines none of the claims for which defense was provided are covered under the Policy,
23 TPCC has a right to reimbursement for any defense costs TPCC has incurred.

1 5.28 To the extent that none of the claims are covered under the Policy, there is an
2 actual and justiciable controversy as to whether TPCC's defense costs will be reimbursed.

3 5.29 TPCC reserves the right to assert any other exclusions or grounds for which
4 coverage for the claims against PIC may be excluded under the Policy.

5 **VI. CAUSE OF ACTION FOR DECLARATORY RELIEF**

6 6.1 TPCC reasserts paragraphs 1.1 through 5.29 and incorporates the same as though
7 fully set forth herein.

8 6.2 Actual and justiciable controversies exist as to whether any defense coverage is
9 available to PIC under the Policy as set forth above.

10 6.3 Pursuant to and in accordance with 28 U.S.C. § 2201, TPCC requests that the
11 Court grant declaratory relief in favor of TPCC and enter a judicial determination that TPCC
12 does not have an obligation to provide a defense to PIC in regard to the Maplehurst claim.

13 6.4 Actual and justiciable controversies exist as to whether any indemnity coverage
14 is available to PIC under the Policy in regard to the claims related to the Underlying Lawsuit.

15 6.5 Pursuant to and in accordance with 28 U.S.C. § 2201, TPCC requests that the
16 Court grant declaratory relief in favor TPCC and enter a judicial determination that TPCC does
17 not have an obligation to provide any indemnity coverage to PIC regarding the claims arising
18 from the Maplehurst claim.

19 **VII. PRAYER FOR RELIEF**

20 WHEREFORE, Travelers Property Casualty Company of America having specifically
21 alleged the foregoing, now prays for the following relief:

22 1. For a declaration of the rights and obligations of the parties hereto under the
23 Policy.

2. For a declaration that there is no duty to defend PIC under the Policy.

3. For a declaration that there is no duty to indemnify PIC under the Policy.

4. For a judicial declaration that PIC is bound by any judicial declarations in this matter involving the Policy.

5. To the extent allowed by applicable law, for reimbursement of any and all defense costs, fees, or expenses incurred by TPCC in defending any entity or person in the Maplehurst claim who claims to be an insured under the Policy for which there is no defense obligation.

6. For all pre-judgment and post-judgment interest as allowed by applicable law.

7. For attorney fees and costs allowed by applicable statute and law.

8. For other and further relief as the Court deems just and equitable.

DATED this 29th day of October 2021.

LEATHER LAW GROUP

s/ Thomas Lether

s/ Eric Neal

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